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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION NO.16 OF 2007

Dr.Madhuri Sachin Jadhav Applicant
versus
Dr.Sachin Shivajirao Jadhav Respondent

Mrs.Shubhada S. Gokhale for applicant.
Mr.V.M.Parsuramani for respondent.

CORAM : A.S.OKA, J.
DATE : 24th April 2007
PC :

1. Submissions of the learned advocates appearing for the parties were heard on the last date. The applicant is the wife and the respondent is the husband. Prayer in this application is for transfer of a petition filed by the respondent for dissolution of marriage under the Hindu Marriage Act, 1955 which is pending in the Court of Civil Judge, Senior Division, Kolhapur. The prayer in the application is for transfer of the said petition to the Court of Civil Judge, Senior Division, Nashik at Nashik.

2. The learned advocate for the applicant has invited my attention to various averments made in the application and has pointed out that it is

not possible for the applicant to attend the proceedings at Kolhapur. The learned advocate for applicant relied upon certain decisions of the Apex Court which are referred to in the later part of this order. Learned advocate for the respondent submitted that the Hindu Marriage Act, 1955 gives a choice to a litigant to file a petition for divorce in one of the three Courts indicated in Section 19 thereof. As the respondent has exercised the option of filing the petition in the Court at Kolhapur, the order of transfer cannot be passed as the same will render Section 19 of the said Act of 1955 ineffective. He invited my attention to various averments made in the affidavit in reply and stated that no case is made out for transfer. He placed reliance on the decision of the Apex Court in the case of Anindita Das Vs. Srijit Das [(2006)9-SCC-197]. He also placed reliance on two other decisions of the Apex Court in the case of Reema Sethi Vs. Deepk Sethi [(2005)11-SCC-568] and Sarita Singh V/s A.P.Baghel [(2005)12-SCC-376].

3. In the application it is stated that the applicant is the resident of Nashik. It is stated that for attending to the Court at Kolhapur the applicant is required to undertake

travelling for a distance of more than 500 kms.. She has stated that only male member in her family is her father who is working at Nashik and who is a diabetic. It is stated that her father is suffering from hypertension. It is further averred in the application that the very sight of Kolhapur makes the applicant nervous and she suffers from depression. During the discussion in the chamber of the learned Trial Judge at Kolhapur, she vomited due to tension. The applicant has no relatives at Kolhapur. Therefore, it is financially, physically and mentally difficult for the applicant to travel to Kolhapur to attend the divorce proceedings. She has stated that the respondent has many friends at Nashik. In any event, being a male, he can stay in a hotel.

4. In the affidavit-in-reply the respondent has stated that the applicant is practicing as a Dental Surgeon at Nashik and this fact is not disclosed in the application. There is a general denial of the averments made by the applicant in paragraph no.7 of the application.

5. On the basis of the decisions of the Apex court relied upon by the advocate for the

respondent the submission is that merely because the applicant is a woman, on sympathetic grounds the order of transfer cannot be made. Reliance is placed on decision of the Apex Court in the case of Anindita Das (supra). He has also placed reliance on the decision of Apex Court in the case of Sarita Singh @ Babli Baghel Vs. A.P.Baghel reported in (2005)12-SCC-376. His submission appears to be that in a given case the wife can be paid requisite amount by the husband for meeting the expenses of travelling and it is not necessary to pass an order of transfer on the ground that the wife is staying at a far away place.

6. In the application the applicant has averred that she will have to undertake a journey of more than 500 kms. for reaching Kolhapur from Nashik. The applicant is contesting the petition filed by the respondent. Naturally, the applicant is required to hold conferences with her lawyer at Kolhapur. Considering the distance between two places, she will have to stay overnight at Kolhapur. The case made out by her is that the only male member in her family is her father who is always unable to accompany her.

7. A reference is made to a decision of the Apex Court in the case of Anindita Das (supra). In the said decision, the Apex Court has noted that the said Court was showing leniency to ladies and it was found that a large number of transfer petitions were filed by women taking advantage of the leniency shown by the Court. It is observed that the leniency was being misused by the women and, therefore, the Court is required to consider each petition on it’s merits. Thus, the Apex Court has put a word of caution. The Apex Court has observed that the application for transfer at the instance of a wife should not be allowed by taking a lenient view and every case is required to be considered on it’s own merits.

8. Turning back to the facts of the present case, even assuming that the applicant is practicing as a Dental Surgeon at Nashik, it cannot be disputed that she will have to undertake a long journey for reaching Kolhapur. She will have to stay overnight at Kolhapur. There is no person available who is in position to accompany the applicant to Kolhapur. Considering the distance between the two places and considering what is stated in paragraph no.7 of the application, it is obvious that an

inconvenience will be caused to the applicant if she has to attend the Court at Kolhapur. It is stated that the respondent has friends at Nashik. Apart from that, being a male, the respondent can always stay overnight in a hotel at Nashik.

9. Considering the peculiar facts of this case which are referred to above, a case is made out for passing an order of transfer. In the present case even if respondent pays travelling charges to the applicant, the genuine inconvenience which is likely to be caused to the applicant will not be reduced. It is not a case where advantage is sought to be taken by the applicant of the leniency of the Court. Hence, I pass following order.

10. ORDER :-

(a) Hindu Marriage Petition No.159 of 2006 is hereby transferred from the Court of Civil Judge, Senior Division, Kolhapur to the Court of Civil Judge, Senior Division, Nashik;

(b) After the transfer of the petition, the concerned Court will issue notice to both the parties informing the parties the next date fixed

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in the case;

(c) There will be no orders as to costs.

(A.S.OKA, J.)